

District Judge Tana Lin

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

THE UNIVERSITY OF WASHINGTON, a
Washington State Agency; THE CENTER FOR
HUMAN RIGHTS AT THE UNIVERSITY OF
WASHINGTON, a research center created by
state law; and ANGELA GODOY, Director of
the Center for Human Rights at the University of
Washington,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; and UNITED
STATES IMMIGRATION AND CUSTOMS
ENFORCEMENT,

Defendants.

Case No. 2:22-cv-01329-TL

JOINT STATUS REPORT

Pursuant to the parties' joint status report, filed November 30, 2022, ("November JSR")
Dkt. 17, ¶ 3, the parties respectfully submit the following joint status report.

1. On September 20, 2022, Plaintiffs filed their Complaint seeking relief under the
Freedom of Information Act ("FOIA") in connection with their requests for certain records which
Plaintiffs believe to be in the possession, custody, or control of Defendants. Dkt. 1

2. On November 18, 2022, the Court entered a Revised Order Regarding Joint Status
Report, requiring the parties to file a combined joint status report and discovery plan. Dkt. 15.

3. On November 28, 2022, Defendants filed their Answer. Dkt. 16.

4. On November 30, 2022, pursuant to the Court's November 18, 2022 Order, the parties filed the November JSR. Dkt. 17.

5. In the November JSR, the parties stated their concise positions concerning the relief requested in the Complaint. *Id.* at ¶ 1.

6. Plaintiffs stated that that they sought (1) production of certain documents responsive to their FOIA requests and already identified by Defendants by December 7, 2022, (2) production of other especially time-sensitive documents responsive to Plaintiffs' FOIA requests by January 17, 2022, and (3) rolling productions thereafter of other responsive documents starting on the 15th of every month¹ starting on February 15, 2023, until complete, with all productions completed by August 15, 2023. *Id.* at ¶ 1(A).

7. Defendants stated that the issues were relatively straightforward, and that no one FOIA request in the Complaint appeared particularly complex. *Id.* at ¶ 1(B). As Defendants have learned more about the numerous FOIA requests at issue, Defendants have come to believe that while the legal issues are straightforward, some of the FOIA requests will require a significant amount of labor to review the information for production. For example, some requests seek information that goes back over a decade and could involve millions of lines of data from multiple different systems, and others are seeking thousands of reports that need to be reviewed and redacted because they contain highly sensitive information about the status of noncitizens that cannot be made publicly available. Defendants stated further that they were hopeful the parties could agree on a reasonable schedule to fully satisfy Plaintiffs' FOIA requests. *Id.*

8. On December 14, 2022, the parties held a telephonic meet and confer during which they discussed the mechanism by which Defendants would produce documents, clarifications of certain of Plaintiffs' FOIA requests, an update on Defendants' search efforts, and the proposed production schedule Plaintiffs included in the November JSR. Plaintiffs provided a draft JSR on December 20, 2022, proposing the same dates for production Plaintiffs had proposed in the November JSR.

¹ If the 15th of the month falls on a Saturday, Sunday, or federal U.S. holiday, then the following business day.

1 9. The parties have continued negotiating the terms of a reasonable production
 2 schedule, and agree to continue to meet and confer throughout the negotiation and production
 3 process. The parties have not yet agreed to the specific terms of a production schedule, but offer
 4 the following position statements:

- 5 a. Plaintiff's Position: Plaintiffs' proposed a reasonable production schedule in their
 6 position statement in the November JSR. Attempts to reach a final agreement with
 7 Defendants regarding their commitments to a production schedule have not yet
 8 resulted in a comprehensive and mutually acceptable agreement. Plaintiffs are
 9 committed to continuing negotiating in good faith, but also recognize that
 10 documents responsive to certain of Plaintiffs' FOIA requests are especially time-
 11 sensitive—requiring production in January 2023 if they are to have value—and that
 12 anything less than a firm commitment by Defendants to complete all productions
 13 by August 15, 2023 gives Plaintiffs serious concern that Defendants cannot commit
 14 to a reasonable production schedule to satisfy their FOIA obligations. Plaintiffs
 15 submitted the FOIA requests at issue as early as February 2019, and will have been
 16 waiting for up to four years (and at the very least nine months) for production of
 17 these public documents if Defendants do not bring productions until February,
 18 2023. ICE has a duty to make responsive documents “promptly available.” *Citizens*
 19 *for Resp. & Ethics in Washington v. Fed. Election Comm’n*, 711 F.3d 180, 188
 20 (D.C. Cir. 2013). This “typically would mean within days or a few weeks of a
 21 determination, not months or years.” *Id. See also, Payne Enters., Inc. v. United*
 22 *States*, 837 F.2d 486, 494 (D.C. Cir. 1988) (“[U]nreasonable delays in disclosing
 23 non-exempt documents violate the intent and purpose of the FOIA.”). Because of
 24 the importance of time-sensitive productions in response to ICE0243, ICE0249, and
 25 ICE0090 by January 17, 2023, Plaintiffs believe the parties should be required to
 26 file their next JSR by February 1, 2023, to update the Court on their progress.
 27

b. Defendants' Position: Defendants understand their commitments under FOIA and are continuing to work diligently to provide documents responsive to the requests at issue. Plaintiffs have brought an action concerning over 15 different FOIA requests, which were submitted at various times and are at various stages of completion. Defendants believe the Court should set a schedule that includes a date by which Defendants should comply with all the FOIA requests and let the Parties determine how best to meet that deadline. Multiple interim discovery deadlines and Joint Status Reports throughout the process will only hinder efforts at producing information, as well as unnecessarily burden the Court. Plaintiffs propose August 15, 2023, for that final date. Defendants would ask for September 15, 2023. Defendants are also amenable to producing documents on a rolling basis throughout this time starting in February 2023, or earlier if documents are ready prior to that. These dates would allow sufficient time for dispositive motion practice, which the parties earlier proposed for October 27, 2023. Defendants anticipate meeting and conferring informally with Plaintiffs throughout the discovery period to effectively manage issues as necessary, which may include seeking any additional time, if supported by good cause and as the Court allows.

DATED this 22nd day of December 2022.

Respectfully submitted,

1 DAVIS, WRIGHT, TREMAINE, LLP
2 Special Assistant Attorneys General

3 s/ Daniel A. Fiedler

4 DANIEL A. FIEDLER, WSBA #56436
5 920 Fifth Avenue, Suite 3300
6 Seattle, WA 98104-1610
7 Phone: 206-622-3150
8 Fax: 206-757-7700
9 Email: danielfiedler@dwt.com

10 Thomas R. Burke, Pro Hac Vice
11 505 Montgomery Street, Suite 800
12 San Francisco, CA 94111-6533
13 Phone: 415-276-6552
14 Fax: 415-276-6599
15 Email: thomasburke@dwt.com

16 *Attorneys for Plaintiffs*

17 NICHOLAS W. BROWN
18 United States Attorney

19 s/ Nickolas Bohl

20 NICKOLAS BOHL WSBA #48978
21 Assistant United States Attorney
22 United States Attorney's Office
23 700 Stewart Street, Suite 5220
24 Seattle, Washington 98101-1271
25 Phone: 206-553-7970
26 Fax: 206-553-4067
27 Email: nickolas.bohl@usdoj.gov

Attorney for Defendants